IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.778 OF 1999

SAYED MOHAMED SHAH ABDUL HAMID KADRI,)
Resident of Gool Villa, First Floor,)
Veer Savarkar Marg, Mahim, Mumbai -)
400 016.)..Petitioner.

V/s

(1) THE STATE OF MAHARASHTRA)
(2) THE SPECIAL LAND ACQUISITION)
OFFICER,)
Metro Centre No.3, New Panvel,)
District Raigad.)..Respondents.

Mr. S.M. Railkar for the petitioner.

Mr. V.S. Gokhale, AGP for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 24th August, 2005.

ORAL JUDGMENT: (Per R.M.S. KHANDEPARKAR, J.)

1. Heard. Perused the records.

2. The Petitioner challenges the award No.1 dated 19/10/1996 passed in Land Acquisition Case No. Vahal 12/94.

3. The Petitioner claims to be the owner of the land bearing Survey No. 427/1 situated in Village Vahal, Taluka Panvel, District Raigad, having acquired possession and ownership thereof pursuant to Sale Deed dated 27/03/1962 from erstwhile owners of the land.

4. In 1994, possession of 1 Hectare 72.6 Ares of the said property was sought to be acquired by CIDCO for the purpose of laying down water pipe line. Notification under section 4(1) of the Land Acquisition Act for acquisition of 3 Hectares and 3 Ares came to be issued on 28/06/1994 which was objected to by the petitioner by filing objections on 09/08/1994. It was followed by necessary inquiry and, subsequently, declaration under section 6 of the said Act was issued on 05/12/1994. Individual notices under section 9 of the said Act came to be issued to the petitioner on 16/01/1995 and the petitioner putforth his claim in respect of the land sought to be acquired by his application dated 28/03/1995. Final award came to be passed on 19/10/1996. However, the compensation to be awarded for the acquisition of the area of 3 Hectares and 3 Ares under the said award came to be denied to the petitioner on the ground that there is a dispute sought to be raised by the Forest Department and, therefore, the matter was sought to be referred to the Reference Court under section 30 with further direction to deposit compensation in Reference Court to be disbursed in accordance with the award to be passed by the Reference Court under section 30.

5. It is the contention of the petitioner that the fact that the dispute was sought to be raised in relation to the land in question on behalf of the Forest Department and, therefore, the matter was being referred under section 30 to the Reference Court was not known to the petitioner at the time when the present Petition was filed. It was revealed to the petitioner for the first time in affidavit-in-reply to the present Petition filed on 30/03/2000. It is also a matter of record that during the pendency of this Petition, by order dated 09/09/1999, respondents were directed to deposit entire amount inclusive of interest @ 18% in this Court. Further, the petitioner was allowed to withdraw the amount of Rs 3 lakhs out of the amount deposited under Order dated 14/08/2001, subject to furnishing the appropriate security. The petitioner appears to have withdrawn the said amount accordingly.

6. Upon hearing the learned advocates for the parties and on perusal of record, the only point which arises for consideration is : whether the Land Acquisition Officer was justified in referring the matter under section 30 and directing the amount to be deposited in the Reference Court by making it subject to the award in such reference proceedings, in the facts and

circumstances of the case?

7. The perusal of the impugned award discloses that the Land Acquisition Officer had issued direction for reference under section 30 and deposited the amount in the reference Court to be disbursed in accordance with the award to be passed in such proceedings, on the ground that the Chief Lands & Survey Officer, CIDCO, Navi Mumbai vide his letter bearing No.Land/3A/580/96 dated 11/12/96 had informed that as per the Forest Department, the land which is claimed by the petitioner had been acquired as per the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 and the same is in possession of the Government of Maharashtra. Referring to the said intimation given to the Land Acquisition Officer, it has been further observed in the impugned award that even though CIDCO, under the said letter, has claimed the land to have already been acquired by the Forest Department, the same continued to be recorded in the name of Shri Sayyed Mohammed Shah Abdul Hameed Kadri in the revenue record which bears Survey No.427/1, admeasuring 39 H. 84 A and, therefore, the Land Acquisition Officer, instead of awarding the compensation in favour of the petitioner - claimant, directed the same to be deposited in the Reference

Court to be disbursed in accordance with the award under section 30.

8. Bare perusal of the impugned award, therefore, discloses that the Land Acquisition Officer being unable to arrive at the finding about the entitlement of the petitioner as a person interested to claim the amount awarded on account of acquisition of the land and, on the claim made by the CIDCO that the land in question has already been acquired for the Forest Department, proceeded to pass the order for reference under section 30 and directed that the amount be deposited in Reference Court in such proceedings. Section 30 of the Land Acquisition Act provides that when the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. Obviously, in cases where dispute arises before the Land Acquisition Officer regarding the apportionment of the compensation fixed by him in relation to the land sought to be acquired, certainly the matter will have to be referred to the Reference Court in terms of section 30. However, it is to be noted that section 30 specifically speaks of

'if any dispute arises as to the apportionment of the compensation'. In other words, there has to be a dispute arising before the Land Acquisition Officer before he can exercise the powers under section 30 and dispute should be in relation to the apportionment of the compensation. The apportionment of the compensation spoken of under section 30 necessarily relates to the apportionment between the persons interested. Under section 11(1), the Collector consequent to the replies received to the notices under section 9 of the said Act has to make an award in relation to the true area of the land, compensation of which, in his opinion, should be allowed for the land and the apportionment of the compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. In other words, while deciding the exact area which is the subject matter of acquisition and ascertaining market value of such land in terms of sections 23 and 24 of the said Act, the Land Acquisition Officer has necessarily to decide about the apportionment of the compensation to all the persons known or believed to be interested in such land. The very fact that the Land Acquisition Officer is expected to decide about apportionment of the

compensation among the persons interested, disclose the power of the Land Acquisition Officer to look into the rights of the interested persons in relation to the land sought to be acquired and, based on such rights, to decide about the apportionment of the compensation. In order to ascertain rights of the persons interested for the purpose of apportionment of compensation, obviously, the Land Acquisition Officer will have to look into the material to be produced by the person interested in support of their claim as the person interested and their share in the land acquired. Needless to say that apportionment of compensation to the persons interested would not be possible without application of mind by the Land Acquisition Officer to the claim putforth by the interested persons and substantiated by them with necessary materials in that regard. From this, it also follows that when any person interested wants to raise a dispute as regards the entitlement of the compensation to himself or disentitlement of compensation to any other person interested in the matter, such person has necessarily to substantiate his claim or dispute by necessary material or evidence in support of such objection. It is not a mere objection for the sake of objection that would empower the Land Acquisition Officer to blindly exercise

powers under section 30. In order to exercise powers under section 30, the Land Acquisition Officer will have to disclose the application of mind to the dispute sought to be raised and the necessity of adjudication of that dispute by the Court of competent jurisdiction and, therefore, the matter being needed to be referred to the Reference Court in exercise of powers under section 30. It cannot be done in the manner of postman's job to deliver letters but it must necessarily disclose application of mind by the Land Acquisition Officer in the award itself that there is a need for reference of the matter to the Reference Court under section 30.

9. Bearing in mind these provisions of law, if one peruses the impugned award, it would disclose that apart from the letter filed by CIDCO informing that the land in question has already been acquired for the Forest Department, there was no material placed before the Land Acquisition Officer to exercise the powers under section 30 and deny the compensation to the petitioner who was clearly shown to be the owner of the property pursuant to the Sale Deed in his favour in relation to the land in question.

10. Attention was drawn to section 3 of the

Maharashtra Private Forests (Acquisition) Act, 1975 to contend that all private forests stand acquired under the said provision and, therefore, the petitioner could not have claimed the compensation in relation to the land in question, the same having already been acquired in exercise of powers under section 3 of the Maharashtra Private Forests (Acquisition) Act, 1975. Undoubtedly, sub-section (1) of section 3 of the Maharasthra Private Forests (Acquisition) Act, 1975 provides that notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government, and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished. The Act came into force with effect from 1/10/1975. However, the fact remains that apart from merely claiming that the land has been acquired for the Forest Department in exercise of powers under the said

provision, the respondents have unable to show that the land in question did form a forest land for the purpose of acquisition under the said Act at any point of time. It is pertinent to note that even in the impugned award there is no finding about the nature of the land in question to be a forest land or that it was a forest land at any point of time earlier to passing of the impugned award. On the contrary, a description regarding the land disclosed that it did not have any wild trees nor any fruit bearing trees. In the absence of any finding that the land in question was at any point of time a forest land to which the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 apply as well as in view of the specific finding by Land Acquisition Officer that the land did not have any wild trees or fruit bearing trees therein, it is difficult to accept the contention of the respondents that the Land Acquisition Officer was justified, on the basis of the letter of CIDCO, to refer the matter for decision of the Reference Court in exercise of powers under section 30.

11. Neither the impugned award on the face of it justifies the order under section 30, nor the respondents have been able to justify the action on

the part of the Land Acquisition Officer in referring the matter to the Reference Court under section 30 in the case in hand. Therefore, the impugned award, to the extent it directs the matter to be referred to the Reference Court under section 30 and consequential deposit of the amount of compensation awarded therein in Reference Court, cannot be sustained and is liable to be quashed and set aside.

12. The Petition, therefore, succeeds. The impugned award, to the extent it directs the reference of the matter to the Reference Court under section 30 of the Land Acquisition Act, 1894 and consequential deposit of the amount of compensation in the Reference Court, is hereby quashed and set aside and the amount awarded is ordered to be released in favour of the petitioner who shall be entitled to receive the same subject to the regular formalities regarding submission of necessary bond and whatever other requirements of law. Rule is made absolute accordingly with no order as to costs.

13. Issuance of certified copy expedited.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)